

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SHANE D. WALIEZER,

Plaintiff,

v.

ADAM FORTNEY, *et al.*,

Defendants.

CASE NO. **2:21-cv-01100-RAJ-JRC**

ORDER

Plaintiff filed this action under 42 U.S.C. § 1983. Dkt. 5. On October 25, 2021, this Court entered a scheduling order. Dkt. 29. The scheduling order set a discovery deadline of March 25, 2022. *Id.* at 1.

On November 23, 2021, plaintiff filed a motion to delay response to defendants' first interrogatories and requests for production of records ("motion to delay"). *See* Dkt. 33 at 1, 5. Plaintiff contends that he cannot adequately respond to these requests until defendants produce certain discovery that he has requested from them. *See id.* at 1–4.

1        This motion is in essence a motion for a protective order. Such motions “must include a  
2 certification . . . that the movant has engaged in a good faith meet and confer conference . . . in  
3 an effort to resolve the dispute without court action.” LCR 26(c). “The certification must list the  
4 date, manner, and participants to the conference.” *Id.* As applicable here, a “good faith effort to  
5 confer requires a . . . telephone conference.” *Id.* “If the movant fails to include such a  
6 certification, the court may deny the motion without addressing the merits of the dispute.” *Id.*

7        Here, because plaintiff’s motion to delay does not include the necessary certification, it is  
8 improper. This Court directs Plaintiff to work with his classification officer or other appropriate  
9 prison official to arrange a telephonic conference with defendants. Consequently, this Court  
10 denies the motion to delay without prejudice, which means he may file the motion again if he  
11 meets the procedural requirements for doing so. This disposition moots the remaining requests in  
12 this motion.

13        Plaintiff has also filed a motion to appoint expert witnesses under Federal Rule of  
14 Evidence 706. Dkt. 34. Plaintiff seeks appointment of a “trauma doctor” to examine his medical  
15 records and generate a report of his alleged injuries. *Id.* at 1. He also seeks appointment of a  
16 “trained forensic psychiatrist” to examine his mental health records and assess his mental health  
17 as it relates to “the incident in question.” *Id.* at 2. Additionally, he seeks appointment of a “police  
18 practice[s]” expert examine evidence and “generate a comprehensive report regarding the  
19 [alleged] use of force on plaintiff.” *Id.*

20        Federal Rule of Evidence 706 gives courts discretion to appoint neutral expert witnesses.  
21 *See Claiborne v. Blauser*, 934 F.3d 885, 889 (9th Cir. 2019) (citation omitted). “The principal  
22 purpose of a court-appointed expert pursuant to Rule 706, is to assist the trier of fact, not to serve  
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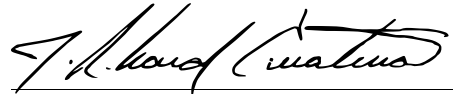
1 as an advocate for a party.” *Bontemps v. Lee*, No. 2:12-CV-0771 KJN P, 2013 WL 417790 (E.D.  
2 Cal. Jan. 31, 2013).

3 Here, Plaintiff seeks appointment of expert witnesses to help him develop his evidence.  
4 Because such experts would not be “independent,” *see Walker v. Am. Home Shield Long Term*  
5 *Disability Plan*, 180 F.3d 1065, 1071 (9th Cir. 1999) (citation omitted), their appointment is  
6 improper under Rule 706. Furthermore, even if the witnesses were neutral, the record does not  
7 yet indicate that appointment of a neutral expert witness would be necessary or helpful to this  
8 Court in evaluating any “complex scientific issues or evidence.” *See Rincker v. Oregon Dep’t of*  
9 *Corr.*, 301 F. App’x 720 (9th Cir. 2008) (citation omitted); *see also Walker*, 180 F.3d at 1071.  
10 Accordingly, this Court denies plaintiff’s motion to appoint expert witnesses without prejudice.

11 Plaintiff has also filed a motion for extension of time to complete discovery. Dkt. 35.  
12 However, because the discovery deadline is March 25, 2022, this request is premature. This  
13 Court denies this motion without prejudice.

14 Accordingly, this Court DENIES WITHOUT PREJUDICE plaintiff’s motion to delay  
15 (Dkt. 33), motion to appoint expert witnesses (Dkt. 34), and motion for extension of time to  
16 complete discovery (Dkt. 35). The Clerk is directed to MAIL plaintiff a copy of this order.

17 Dated this 21st day of December, 2021.

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20 J. Richard Creatura  
21 Chief United States Magistrate Judge  
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